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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 **Oziel Sawyer III,**

17 Plaintiff,

18 v.

19 **EWAC, LLC**, a California Limited
20 Liability Company;
21 **Abatin Wellness Center Of
Oakland**, a Cooperative
22 Corporation; and Does 1-10,

23 Defendants.

24 **Case No.**

25 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

26 Plaintiff Oziel Sawyer III complains of EWAC, LLC, a California
27 Limited Liability Company; Abatin Wellness Center Of Oakland, a
28 Cooperative Corporation; and Does 1-10 ("Defendants"), and alleges as
follows:

29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. He is
32 paralyzed, cannot walk and uses a wheelchair for mobility.
33 2. Defendant EWAC, LLC owned the real property located at or about
34 8440 Enterprise Way, Oakland, California, in September 2019.
35 3. Defendant EWAC, LLC owns the real property located at or about 8440

1 Enterprise Way, Oakland, California, currently.

2 4. Defendant Abatin Wellness Center Of Oakland owned Phytologie
3 Wellness located at or about 8440 Enterprise Way, Oakland, California, in
4 September 2019.

5 5. Defendant Abatin Wellness Center Of Oakland owns Phytologie
6 Wellness located at or about 8440 Enterprise Way, Oakland, California,
7 currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein,
13 including Does 1 through 10, inclusive, is responsible in some capacity for the
14 events herein alleged, or is a necessary party for obtaining appropriate relief.
15 Plaintiff will seek leave to amend when the true names, capacities,
16 connections, and responsibilities of the Defendants and Does 1 through 10,
17 inclusive, are ascertained.

18

19 **JURISDICTION & VENUE:**

20 7. The Court has subject matter jurisdiction over the action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to supplemental jurisdiction, an attendant and related cause
24 of action, arising from the same nucleus of operative facts and arising out of
25 the same transactions, is also brought under California's Unruh Civil Rights
26 Act, which act expressly incorporates the Americans with Disabilities Act.

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.
2

3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff went to Phytologie Wellness in September 2019 with the
5 intention to avail himself of its supplies, motivated in part to determine if the
6 defendants comply with the disability access laws.

7 11. Phytologie Wellness is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
10 to provide accessible sales counters.

11 13. On information and belief, the defendants currently fail to provide
12 accessible sales counters.

13 14. Plaintiff personally encountered this barrier.

14 15. By failing to provide accessible facilities, the defendants denied the
15 plaintiff full and equal access.

16 16. The failure to provide accessible facilities created difficulty and
17 discomfort for the Plaintiff.

18 17. Even though the plaintiff did not confront the barrier, on information
19 and belief the defendants currently fail to provide accessible restrooms.

20 18. The defendants have failed to maintain in working and useable
21 conditions those features required to provide ready access to persons with
22 disabilities.

23 19. The barriers identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,
26 these barriers are readily achievable to remove. Moreover, there are numerous
27 alternative accommodations that could be made to provide a greater level of
28 access if complete removal were not achievable.

1 20. Plaintiff will return to Phytologie Wellness to avail himself of its
2 supplies and to determine compliance with the disability access laws once it is
3 represented to him that Phytologie Wellness and its facilities are accessible.
4 Plaintiff is currently deterred from doing so because of his knowledge of the
5 existing barriers and his uncertainty about the existence of yet other barriers
6 on the site. If the barriers are not removed, the plaintiff will face unlawful and
7 discriminatory barriers again.

8 21. Given the obvious and blatant nature of the barriers and violations
9 alleged herein, the plaintiff alleges, on information and belief, that there are
10 other violations and barriers on the site that relate to his disability. Plaintiff will
11 amend the complaint, to provide proper notice regarding the scope of this
12 lawsuit, once he conducts a site inspection. However, please be on notice that
13 the plaintiff seeks to have all barriers related to his disability remedied. See
14 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
15 encounters one barrier at a site, he can sue to have all barriers that relate to his
16 disability removed regardless of whether he personally encountered them).

17

18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
19 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 23. Under the ADA, it is an act of discrimination to fail to ensure that the
25 privileges, advantages, accommodations, facilities, goods and services of any
26 place of public accommodation is offered on a full and equal basis by anyone
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
28 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 1 a. A failure to make reasonable modifications in policies, practices,
2 or procedures, when such modifications are necessary to afford
3 goods, services, facilities, privileges, advantages, or
4 accommodations to individuals with disabilities, unless the
5 accommodation would work a fundamental alteration of those
6 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 7 b. A failure to remove architectural barriers where such removal is
8 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
9 defined by reference to the ADA Standards.
- 10 c. A failure to make alterations in such a manner that, to the
11 maximum extent feasible, the altered portions of the facility are
12 readily accessible to and usable by individuals with disabilities,
13 including individuals who use wheelchairs or to ensure that, to the
14 maximum extent feasible, the path of travel to the altered area and
15 the bathrooms, telephones, and drinking fountains serving the
16 altered area, are readily accessible to and usable by individuals
17 with disabilities. 42 U.S.C. § 12183(a)(2).

18 24. When a business provides facilities such as sales or transaction counters,
19 it must provide accessible sales or transaction counters.

20 25. Here, accessible sales or transaction counters have not been provided.

21 26. When a business provides facilities such as restrooms, it must provide
22 accessible restrooms.

23 27. Here, accessible restrooms have not been provided.

24 28. The Safe Harbor provisions of the 2010 Standards are not applicable
25 here because the conditions challenged in this lawsuit do not comply with the
26 1991 Standards.

27 29. A public accommodation must maintain in operable working condition
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 30. Here, the failure to ensure that the accessible facilities were available
3 and ready to be used by the plaintiff is a violation of the law.

4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 31. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 32. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 33. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
24 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12 Dated: October 24, 2019

13 CENTER FOR DISABILITY ACCESS

14 By: 

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16 Amanda Seabock, Esq.
17 Attorney for plaintiff